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Decision in CPLR Article 78 proceedings - Levea, William (2020-08-12)

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

In the Matter of the Application of
WILLIAM LEVEA,

DECISION AND ORDER

Petitioner,

Index No. 51558/20

-against-

TINA M. STANFORD, CHAIR OF THE NEW YORK
STATE BOARD OF PAROLE,Respondent.

The following papers were read on Respondent's motion to dismiss:

NOTICE OF PETITION
PETITION
EXHIBITS A - FNOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBITS 1 - 4

AFFIRMATION IN OPPOSITION

This is an Article 78 proceeding in which Petitioner challenges a July 23, 2019 determination of the Parole Board denying him parole release. Respondent moves to dismiss asserting that the petition is moot.

Respondent maintains the proceeding is moot because Petitioner had a medical parole release interview on January 21, 2020 which was denied. Respondent asserts that Petitioner's reappearance before the Parole Board renders academic his challenge to the decision denying him parole release of July 23, 2019. See Matter of Faison v. Rusty, 240 AD2d 822 (3rd Dept 1997). While normally a reappearance before a Parole Board and a subsequent decision denying parole would render moot any petition challenging a determination pre-dating the earlier parole denial, see id., Petitioner's appearance before the Parole Board on January 21, 2020 was an interview to see if medical parole release was warranted. The standards governing medical parole release versus ordinary parole release are not identical. See Executive Law §259-i and §259-s. Ordinary parole release and

medical parole release both require a consideration of whether there is a reasonable probability that the inmate, if released, will live and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society and so deprecate the seriousness of his crime as to undermine respect for the law. The specified factors the Board *shall* consider, however, are not the same. In considering whether to grant release on medical parole, the Board must consider the nature of the inmate's medical condition and the extent of medical treatment or care the inmate will require as a result of that condition. Executive Law §259-s(1)(b). The Board must also consider the current age of the inmate and his age at the time of the crime. These are not factors the Board is required to consider in deciding whether to grant discretionary parole release. See Executive Law §259-i. Moreover, as its name suggests, a determination of whether to grant medical parole release involves an overarching consideration of the petitioner's medical condition as a primary factor in determining whether parole release is warranted. This is not a factor within the context of a routine discretionary parole release interview. Based on the foregoing, the court rejects Respondent's claim that the denial of medical parole release subsequent to the date of the challenged determination renders this proceeding moot. Wherefore, it is

ORDERED that Respondent's motion to dismiss is denied. Respondent shall serve and file an answer to the petition within five days after service of this order with notice of entry. See CPLR §7804(f). Petitioner is granted seven days from the date of service of the answer to serve and file any reply. The matter shall be fully submitted as of that date.

The foregoing constitutes the decision and order of the Court.

Dated: August 12, 2020
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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